

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

JUL 26 2006

DAVID J. MALAND, CLERK

DEPUTY

Blackboard Inc.,

Plaintiff,

v.

Desire2Learn Inc.,

Defendant.

Case No.

Jury Trial Demanded

Judge Clark

PLAINTIFF BLACKBOARD INC.'S COMPLAINT FOR PATENT INFRINGEMENT

THE PARTIES

1. Plaintiff Blackboard Inc. ("Blackboard") is a corporation organized under the laws of the State of Delaware, having its principal place of business at 1899 L Street NW, Washington, District of Columbia 20036.

2. Upon information and belief, defendant Desire2Learn Inc. ("D2L") is and has been a corporation organized under the laws of Canada, having its principal place of business at 72 Victoria Street South, Suite 401, Kitchener-Waterloo, Ontario, Canada N2G 4Y9.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over D2L because D2L conducts business and has committed acts of patent infringement and/or has contributed to or induced acts of patent infringement by others in the State of Texas (as well as elsewhere in the United States).

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400.

BLACKBOARD'S PATENT IN SUIT

6. On January 17, 2006, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,988,138 B1 entitled "Internet-Based Education Support System and Methods" (the "'138 patent"). A true and correct copy of the '138 patent is attached hereto as Exhibit A.

7. Blackboard is the owner of all right, title, and interest in and to the '138 patent by assignment, with full and exclusive right to bring suit to enforce the '138 patent, including the right to recover for past infringement.

COUNT ONE

D2L's INFRINGEMENT OF THE '138 PATENT

8. Blackboard realleges and incorporates herein the allegations of paragraphs 1 through 7 as if fully set forth herein.

9. The '138 patent is valid and enforceable.

10. Upon information and belief, in violation of 35 U.S.C. § 271, D2L uses, offers to sell, and sells within the United States, and/or imports into the United States, products and services that infringe the '138 patent, including, but not limited to all D2L products based on the D2L learning system or platform, such as the D2L eLearning Technology Suite, which includes the D2L Learning Environment, Learning Repository and LiveRoom, and all services supporting these D2L products, such as hosting services, training services, help desk support services, implementation and customization professional services, and content services.

11. Upon information and belief, in violation of 35 U.S.C. § 271, D2L also contributes to and/or induces infringement of the '138 patent.

12. Upon information and belief, D2L has willfully infringed the '138 patent.

13. Upon information and belief, D2L's acts of infringement of the '138 patent will continue after service of this complaint unless enjoined by the Court.

14. As a result of D2L's infringement, Blackboard has suffered and will suffer damages.

15. Blackboard is entitled to recover from D2L the damages sustained by Blackboard as a result of D2L's wrongful acts in an amount subject to proof at trial.

16. Unless D2L is enjoined by this Court from continuing its infringement of the '138 patent, Blackboard will suffer additional irreparable harm and impairment of the value of its patent rights. Thus, Blackboard is entitled to an injunction against further infringement.

PRAYER FOR RELIEF

WHEREFORE, Blackboard prays for judgment and relief as follows:

- (a) That D2L has infringed the '138 patent under 35 U.S.C. § 271;
- (b) That D2L's infringement of the '138 patent has been willful;
- (c) That D2L be ordered to pay damages adequate to compensate Blackboard for D2L's infringement of the '138 patent pursuant to 35 U.S.C. § 284, including an accounting;
- (d) That D2L be ordered to pay treble damages pursuant to 35 U.S.C. § 284;
- (e) That D2L be ordered to pay Blackboard's attorney fees pursuant to 35 U.S.C. § 285;
- (f) That D2L, its officers, agents, and employees, and those persons acting in active concert or in participation with D2L, and its successors and assigns, be enjoined from further infringement of the '138 patent pursuant to 35 U.S.C. § 283;
- (g) That D2L be ordered to pay prejudgment interest;

(h) That D2L be ordered to pay all of Blackboard's costs associated with this action; and

(i) That Blackboard be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Blackboard demands a trial by jury on all issues so triable.

Dated: July 26, 2006

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